HIGH COURT OF UTTARANCHAL AT – NAINITAL.

Writ Peetition No. 803 (S/S) 2004

Smt. Pushpa Majila W/o Sri Prakash Singh Majila,
R/o village Pangchora, P.O. Kanda,
District Bageshwar. …..Petitioner
Vs.
State of Uttaranchal through Addl. Secretary,
Department of Education,
Uttaranchal Shasan, Dehradun,
And three others. …..Respondents.

Sri Syed Nadeem, learned counsel for the petitioner,
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Syed Nadeem, learned counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner who is Assistant Teacher in Basic School Ghigarutola, District Bageshwar was transferred in the year 2001 from Basic School Pangchora to Bajina. But she did not join at Bajina, the transferred place, and managed to remain there in Basic School Pangchora. According to the petitioner, payment of the salary was stopped on the ground that she had not joined at the transferred place. However, the said order regarding the stoppage of salary was revoked vide order dated 07.05.2003 and she remained in Basic School, Pangchora. Again vide order dated 28.06.2004 the petitioner has been transferred from Basic School Pangchora to Basic School Ghigarutola, district Bageshwar. This order of transfer is under challenged by means of this writ petition.

The petitioner has submitted that the transfer order is passed in violation of policy issued by the Government. Clause-29 of the policy is regarding adjustment of teachers which specifically states that in case there are more teacher which are above the sanctioned strength in a school, the teacher who have long stay in the institute shall be transferred first. It is not disputed that the petitioner is staying in the Institution for the last 22 years. Counsel for the petitioner has also referred the Clause-2 of the policy, which provides the minimum stay of a teacher in Ati Durgam Kshetra and Durgam Kshetra. According to

this Clause, the minimum time of stay for these places shall be 5 years to 10 years. Counsel for the petitioner has submitted that the policy does not provide maximum period of stay and, as such, she could not be transferred. Interpretation of the petitioner is wrong. The intention of the policy is that a person cannot seek transfer prior to 5 years, in case he is working in Ati Durgam Kshetra and prior to the completion of 10 years in the Durgam Kshetra, therefore, the said Claude is not applicable to the present case. The petitioner is staying for the last 22 years in the Institution. Further as held by the Apex Court that the policy does not have statutory force, the petitioner cannot claim on the basis of policy that she should not be transferred. There is no violation of the policy in the present case.

I find no force in the writ petition. The writ petition is dismissed accordingly.

However, if the petitioner wants to file representation, he is at liberty to file the same before the competent authority and the authority shall decide the representation so filed within a period of three weeks from the date of representation of the representation.

(M.M. Ghildiyal, J.)

July 20, 2004:
NCM: